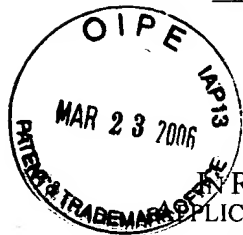


U.S. Application Serial No. 08/749,766
Petition Under 37 C.F.R. §1.181 to Review a Determination of
the Length of the Patent Term Extension Under 37 C.F.R. §1.701

Customer No.: 00909

DAC
JPW

Dated: March 23, 2006



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

RE PATENT Randall B. METCALF
APPLICATION OF:
SERIAL NO.: 08/749,766
ATTORNEY 027966-0311337
DOCKET NO:
FILING DATE: November 20, 1996
ART UNIT : 2644
EXAMINER Daniel Swerdlow
FOR: SOUND SYSTEM AND METHOD FOR CAPTURING AND REPRODUCING
 SOUNDS ORIGINATING FROM A PLURALITY OF SOUND SOURCES

**Petition Under 37 C.F.R. §1.181 to Review a Determination of the Length of
the Patent Term Extension Under 37 C.F.R. §1.701**

MAIL STOP PATENT EXT.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Dear Sir:

In response to the Notice of Allowance and Determination of Patent Term Extension Under 35 U.S.C. §154(b) mailed **January 23, 2006** in the above-captioned application, Applicant respectfully submits this Petition Under 37 C.F.R. §1.181 to Review a Determination of the Length of the Patent Term Extension Under 37 C.F.R. §1.701 (hereinafter "Petition") pursuant to *Former* 35 U.S.C. §154(b) and 37 C.F.R. §1.701. See MPEP §§2710-2720. This Request is being timely filed prior to payment of the issue fee.

Dated: March 23, 2006

REMARKS

Based on the facts as set forth in detail below, Applicant respectfully requests that the 537 day Patent Term Extension set forth in the Determination of Patent Term Extension Under 35 U.S.C. §154(b) mailed **January 23, 2006** (hereinafter the "1/23/06 Determination") be adjusted to account for a period of Appellate Review, pursuant to 37 C.F.R. §1.701(a)(3), that was not accounted for in the 1/23/06 Determination.

A. Petition Fee.

Applicant submits that this Petition is proper under 37 C.F.R. §1.181, and that no fees are due in connection with the filing of this Petition.

In the event that it is determined that fees are due, however, or that the Petition falls under 37 C.F.R. §1.182, Applicant hereby alternatively petitions under 37 C.F.R. §1.182 and authorizes the Director to charge any required fees to the undersigned's Deposit Account No. 033975 (Ref. No. 027966-0311337).

B. Statement of Facts.

1. Applicant filed a Notice of Appeal on August 25, 2000.
2. The Board of Patent Appeals and Interferences issued a Decision reversing the rejections of the Examiner on May 2, 2003.
3. Applicant filed a Notice of Appeal on May 13, 2004.

Dated: March 23, 2006

4. The Board of Patent Appeals and Interferences (hereinafter "BPAI") issued a Decision reversing the rejections of the Examiner on October 31, 2005.

5. The 1/23/06 Determination sets forth a Patent Term Extension of 537 days. This term, as illustrated in the Patent Term Extension History attached hereto as APPENDIX A, accounts for the period of Appellate Review commencing with the filing of the Notice of Appeal by Applicant on May 13, 2004, and ending with the BPAI Decision of October 31, 2005 reversing the rejections of the Examiner.

C. Action Requested.

37 C.F.R. §1.701(c)(3) recites:

The period of delay under paragraph (a)(3) of this section is the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

1. Pursuant to 37 C.F.R. §1.701(c)(3), Applicant requests that the Patent Term Extension be adjusted to account for the period of Appellate Review beginning with the filing of the Notice of Appeal on **August 25, 2000** (the date on which an appeal to the Board of Patent Appeals and Interferences was filed) and ending with the BPAI Decision of **October 31, 2005** (the date of a final decision in favor of Applicant) reversing the rejections of the Examiner. Since this period exceeds five years, Applicant requests the maximum extension of five years pursuant to 37 C.F.R. §1.701(b).

Dated: March 23, 2006

2. To the extent that the U.S. Patent & Trademark Office disagrees with the foregoing interpretation of 37 C.F.R. §1.701(c)(3), Applicant, in the alternative, requests that the Patent Term Extension of 537 days as set forth in the 1/23/06 Determination be adjusted to include the 537 days (from May 13, 2004 to October 31, 2005) plus the period of Appellate Review beginning with the filing of the Notice of Appeal on **August 25, 2000** and ending with the BPAI Decision of **May 2, 2003** (in favor of Applicant) reversing the rejections of the Examiner.

3. Applicant further submits that:

- Pursuant to 37 C.F.R. §1.701(a)(3), the patent issuing on the above-captioned application is not subject to a terminal disclaimer;
- Pursuant to 37 C.F.R. §1.701(d)(1), no time during either period of Appellate Review identified above occurred prior to three years from the filing date of the above-captioned application; and
- Pursuant to 37 C.F.R. §1.701(d)(2), Applicant did not fail to act with due diligence during either period of Appellate Review identified above.

Accordingly, Applicant requests that the 537 day Patent Term Extension be adjusted to the maximum of five years, or alternatively, to the sum of: (1) the period of Appellate review from August 25, 2000 to May 2, 2003; and (2) the period of Appellate Review from May 13, 2004 to October 31, 2005.

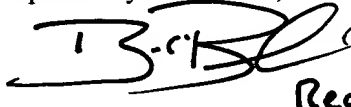
Dated: March 23, 2006

CONCLUSION

In view of the foregoing, Applicant respectfully requests favorable consideration of this Request for Reconsideration of the Patent Term Adjustment Determination. If there are any questions regarding this Request, please do not hesitate to telephone the undersigned at the number provided.

Date: March 23, 2006

Respectfully submitted,

By:  Reg. NO. 47,429
For: James G. Gatto
Registration No. 32,694

PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. Box 10500
McLean, Virginia 22102
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Main: 703-770-7900
Fax: 703-770-7901

Dated: March 23, 2006



APPENDIX A

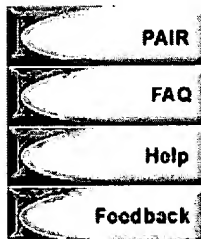
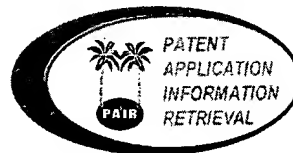
PATENT TERM EXTENSION HISTORY



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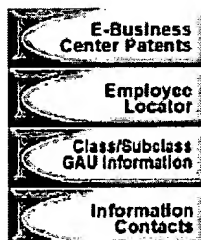


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Patent Term Extension (PTE) for application number: 08/749,766

Explanation of Calculations		Days
Filing or 371(c) Date:	11-20-1996	USPTO Delay (PTO): 537
USPTO Adjustment (days):	+0	Corrections (APPL): 0
		Total PTE: 537

Other Links



Select Search Option

Continuity Data

Display References

File History








Image File Wrapper

Publication Review

Search

Patent Term Extension History

Date	Contents Description	PTO (days)	APPL (days)
01-23-2006	Mail Notice of Allowance		
11-17-2005	Notice of Allowance Data Verification Completed		
10-31-2005	Mail BPAI Decision on Appeal - Reversed		
10-31-2005	BPAI Decision - Examiner Reversed	537	
09-06-2005	Confirmation of Hearing by Appellant	↑	
08-26-2005	Notification of Appeal Hearing	↑	
07-27-2005	Docketing Notice Mailed to Appellant	↑	
07-27-2005	Assignment of Appeal Number	↑	
06-21-2005	Appeal Awaiting BPAI Docketing	↑	
06-20-2005	Case Docketed to Examiner in GAU	↑	
02-11-2005	Mail Reply Brief Noted by Examiner	↑	
02-10-2005	Reply Brief Noted by Examiner	↑	
02-01-2005	IFW TSS Processing by Tech Center Complete	↑	
02-01-2005	Correspondence Address Change	↑	
02-01-2005	Change in Power of Attorney (May Include Associate POA)	↑	
10-02-1997	Reference capture on IDS	↑	
02-01-2005	Date Forwarded to Examiner	↑	
12-29-2004	Reply Brief Filed	↑	
12-29-2004	Request for Oral Hearing	↑	
02-02-2004	Electronic Information Disclosure Statement	↑	
10-29-2004	Mail Examiner's Answer	↑	
10-28-2004	Examiner's Answer to Appeal Brief		

			
08-05-2004	Date Forwarded to Examiner		
06-25-2004	Appeal Brief Filed		
08-05-2004	Date Forwarded to Examiner		
06-25-2004	Amendment/Argument after Notice of Appeal		
06-25-2004	Workflow incoming amendment IFW		
05-13-2004	Notice of Appeal Filed		
05-10-2004	Mail Final Rejection (PTOL - 326)		
05-06-2004	Final Rejection		
04-02-2004	Electronic Information Disclosure Statement		
04-09-2004	Date Forwarded to Examiner		
03-29-2004	Response after Non-Final Action		
03-29-2004	Request for Extension of Time - Granted		
01-08-2004	Miscellaneous Incoming Letter		
12-01-2003	Mail Examiner Interview Summary (PTOL - 413)		
11-14-2003	Examiner Interview Summary Record (PTOL - 413)		
10-29-2003	Mail Examiner Interview Summary (PTOL - 413)		
10-29-2003	Mail Non-Final Rejection		
10-27-2003	Non-Final Rejection		
10-09-2003	Examiner Interview Summary Record (PTOL - 413)		
09-03-2003	Case Docketed to Examiner in GAU		
05-02-2003	Mail BPAI Decision on Appeal - Reversed		
05-02-2003	BPAI Decision - Examiner Reversed		
02-28-2003	Confirmation of Hearing by Appellant		
02-14-2003	Notification of Appeal Hearing		
08-09-2002	Docketing Notice Mailed to Appellant		
08-08-2002	Assignment of Appeal Number		
07-30-2002	Appeal Awaiting BPAI Docketing		
11-28-2001	Mail Reply Brief Noted by Examiner		
11-28-2001	Mail Miscellaneous Communication to Applicant		
11-19-2001	Miscellaneous Communication to Applicant - No Action Count		
11-19-2001	Reply Brief Noted by Examiner		
09-14-2001	Date Forwarded to Examiner		
09-07-2001	Reply Brief Filed		
09-07-2001	Request for Oral Hearing		
07-09-2001	Mail Examiner's Answer		
06-04-2001	Examiner's Answer to Appeal Brief		
03-29-2001	Date Forwarded to Examiner		
03-26-2001	Appeal Brief Filed		
03-26-2001	Request for Extension of Time - Granted		
10-06-2000	Case Docketed to Examiner in GAU		
08-25-2000	Notice of Appeal Filed		
08-25-2000	Request for Extension of Time - Granted		
04-25-2000	Mail Final Rejection (PTOL - 326)		
04-24-2000	Final Rejection		
02-09-2000	Date Forwarded to Examiner		
01-27-2000	Response after Non-Final Action		
10-25-1999	Mail Non-Final Rejection		
10-25-1999	Non-Final Rejection		

08-03-1999	Examiner Interview Summary Record (PTOL - 413)		
07-28-1999	Date Forwarded to Examiner		
07-28-1999	Supplemental Response		
06-10-1999	Request for Extension of Time - Granted		
03-01-1999	Notice of Appeal Filed		
03-01-1999	Request for Extension of Time - Granted		
03-09-1999	Mail Advisory Action (PTOL - 303)		
03-08-1999	Advisory Action (PTOL-303)		
03-03-1999	Examiner Interview Summary Record (PTOL - 413)		
02-16-1999	Examiner Interview Summary Record (PTOL - 413)		
02-05-1999	Date Forwarded to Examiner		
02-01-1999	Amendment after Final Rejection		
02-01-1999	Request for Extension of Time - Granted		
08-31-1998	Mail Final Rejection (PTOL - 326)		
08-31-1998	Final Rejection		
07-17-1998	Date Forwarded to Examiner		
07-06-1998	Response after Non-Final Action		
07-06-1998	Request for Extension of Time - Granted		
01-05-1998	Mail Non-Final Rejection		
12-30-1997	Non-Final Rejection		
10-02-1997	Information Disclosure Statement (IDS) Filed		
10-02-1997	Correspondence Address Change		
10-22-1997	Date Forwarded to Examiner		
10-02-1997	Response after Non-Final Action		
10-02-1997	Request for Extension of Time - Granted		
05-16-1997	Examiner Interview Summary Record (PTOL - 413)		
04-02-1997	Mail Non-Final Rejection		
03-31-1997	Non-Final Rejection		
02-24-1997	Case Docketed to Examiner in GAU		
02-06-1997	Application Captured on Microfilm		
12-11-1996	Initial Exam Team nn		
06-12-2001	Dummy Standard Action - DO Not DELETE		
10-31-2005	Dummy Standard Action - DO Not DELETE		
05-02-2003	Dummy Standard Action - DO Not DELETE		

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